

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:04cv455

OUTSIDE-THE-BOX, INC.,)	
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
GLOBAL INFILIGHT PRODUCTS,)	
a Division of Aviation Spares & Services)	
International Company,)	
)	
Defendant.)	
)	

This matter is before the court upon Defendant and Counterclaimant Global Inflight Product's ("Global") Verified Motion for Relief and to Vacate Dismissal with Prejudice Under Rule 60(b). Global seeks to have the court vacate the Stipulation of Dismissal With Prejudice, filed on June 5, 2006, only to the extent that it dismissed Global's counterclaims against Plaintiff, and place Global's claims against the Plaintiff back on the active docket of the court.

Shortly before trial of this matter in June of 2006, the parties agreed to dismiss their claims against each other and submit the matter to binding arbitration. After the Stipulation of Dismissal was filed, Defendant claims that the Plaintiff failed to follow through with participating in binding arbitration. The Plaintiff claims that Global is the one who has failed to perform consistent with the settlement reached between the parties.

Rule 60(b) of the Federal Rules of Civil Procedure allows the court, in its discretion, to vacate a final judgment for "any other reason justifying relief from the operation of the judgment." When considering a Rule 60(b)(6) motion, the court must use its discretion to decide if the granting of the motion would further justice. Harman v. Pauley, 678 F.2d 479 (4th Cir.

1982). It appears to the court that the granting of Global's motion would not further justice, as Global seeks to have the court vacate the Stipulation of Dismissal only as to its claims against the Plaintiff. The court finds that a better remedy would be for Global to file a separate action for enforcement of the settlement agreement. Accordingly, in the exercise of its discretion, the court denies Global's motion.

IT IS THEREFORE ORDERED that Defendant's Verified Motion for Relief and to Vacate Dismissal with Prejudice Under Rule 60(b) is hereby DENIED.

Signed: May 17, 2007



Graham C. Mullen
United States District Judge

